



D H E C



PROMOTE

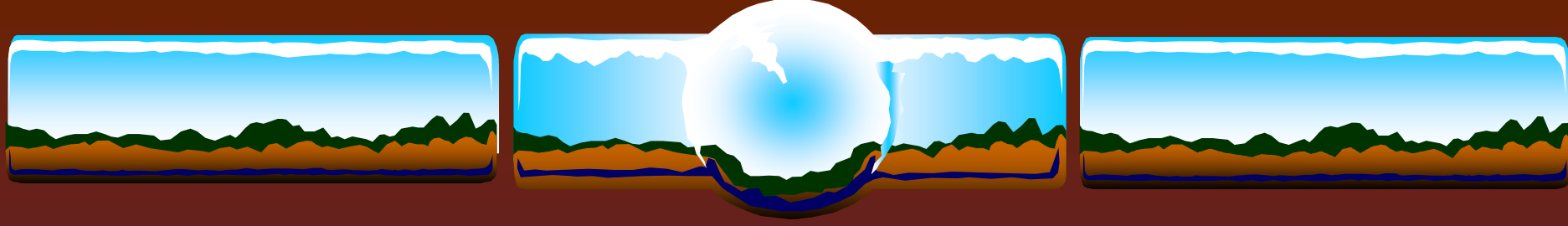


PROTECT



PROSPER

South Carolina Department of Health
and Environmental Control



Voluntary Disclosures

Environmental Assistance

Conference

December 13, 2006

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Background

- ❖ Act 384 of 1996 as amended by Act 270 of 2000
- ❖ SC Code of Laws §48-57-10 *et seq.*
- ❖ **LEGISLATIVE PURPOSE:** to encourage the use of internal, voluntary self-audits to improve compliance & provide limited protection from penalties for disclosure of an environmental violation or audit finding.



Audit Privilege & Voluntary Disclosure

2 legal protections created by the Act:

1. Audit Privilege – protects confidentiality of communications (oral and written) related to voluntary, internal self-audit
2. Immunity from administrative or civil penalties for voluntary disclosure of violations or audit findings to DHEC



Voluntary Disclosure

Section 48-57-100(A)

- ❖ Protection (immunity) from administrative or civil penalties if person or entity makes “voluntary disclosure” of environmental compliance violations
- ❖ Burden of proving that disclosure is “voluntary” rests with person making the disclosure



Voluntary Disclosure Criteria

Section 48-57-100(B)

- ❖ Disclosure is voluntary if :
 1. Disclosure is made within 14 days following reasonable investigation;
 2. To an agency with regulatory authority over the violation disclosed
 3. Action initiated to resolve violation in a diligent manner



Voluntary Disclosure Criteria

4. Person or entity cooperates in investigation of issues identified in the disclosure
5. Person or entity diligently pursues compliance and promptly corrects noncompliance within a reasonable time



Voluntary Disclosure Criteria

- ❖ Disclosure is NOT voluntary if:
 1. Specific permit conditions require monitoring, sampling records, reports or assessment or management plans
 2. Specific permit conditions, orders or environmental laws require notification of releases to environment



Voluntary Disclosure Criteria

3. Violation committed intentionally, willfully, or through criminal negligence
4. Violation not corrected in a diligent manner
5. Significant environmental harm or public health threat caused by violation
6. Violation occurred within 1 year of similar prior violation at same facility and immunity was granted for prior violation



Voluntary Disclosure Criteria

7. Violation resulted in substantial economic benefit thus giving violator clear economic advantage over competitor
 8. Violation is violation of specific terms of judicial or administrative order
- ❖ Final waiver of penalties/fines not granted until full compliance certified by DHEC as occurring within a reasonable time



Voluntary Disclosure - Examples

- ❖ Where disclosure met the criteria –
 - ❖ Failure to obtain a construction permit prior placing equipment (air emission source) into operation
 - ❖ On-site disposal of LCD material without a permit (unpermitted landfill)
 - ❖ Exceeding elevation limit contained in LF permit
 - ❖ Failure to obtain permit to install temporary monitoring wells



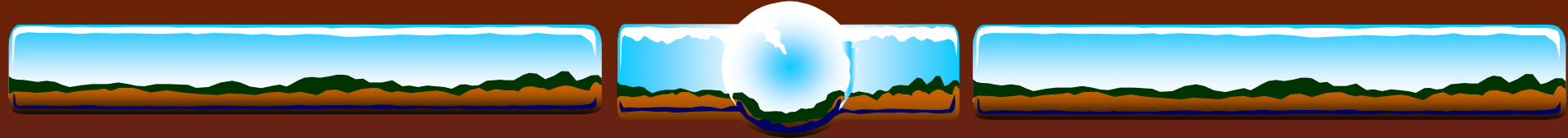
Voluntary Disclosures - Examples

- ❖ Where disclosure did not meet the criteria –
 - ❖ Specific permit conditions required reports to be submitted where DMRs were incorrectly completed and sent in
 - ❖ Exceeding the 14-day period for reporting the violations (between time of discovery and disclosure to DHEC)
 - ❖ Monitoring, recordkeeping and reporting requirements were not met as required by air permit



Processing Voluntary Disclosures

- ❖ Disclosure received, initial notification made by enforcement staff
- ❖ Disclosure reviewed by enforcement staff
- ❖ Review Form completed by enforcement staff with preliminary determination made
- ❖ Form sent to EQC Administration for review
- ❖ Concurrence/non-concurrence made
- ❖ Questions/disagreements to Legal Office



Processing Voluntary Disclosures

- ❖ Voluntary Disclosure Criteria Review Form
- ❖ Guidance for Processing Voluntary Disclosures
- ❖ Copy of statute

Available at <http://www.scdhec.gov/compass>

A-Z Topics, under “V” for “Voluntary” Disclosure